



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 05-1781

Released: June 24, 2005

**DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS
AND TRANSFER OF CONTROL OF A.R.C. NETWORKS INC. TO EUREKA
BROADBAND CORPORATION**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-214

Comments Due: July 8, 2005

Reply Comments Due: July 15, 2005

On June 8, 2005, Eureka Broadband Corporation (“Eureka Parent”), Gillette Global Network d/b/a Eureka Networks (“Eureka”), InfoHighway Communications Corporation (“InfoHighway”), and A.R.C. Networks, Inc. (“A.R.C. Networks,” collectively with Eureka Parent, Eureka, and InfoHighway, “Applicants”), pursuant to sections 63.03 and 63.04 of the Commission’s rules,¹ filed an application requesting authority to transfer control of A.R.C. Networks to Eureka Parent.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission’s rules because immediately following the transaction: (1) Applicants and their affiliates (as defined in Section 3(1) of the Communications Act – “Affiliates”) combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) to the extent that the Applicants or their Affiliates provide U.S. local exchange services or exchange access services, those services will be provided only in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction and; (3) none of the Applicants nor their Affiliates is dominant with respect to any U.S. domestic telecommunications service.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

Eureka Parent is a Delaware corporation that provides service, through its operating subsidiary, Eureka, in New York and New Jersey. Eureka Parent also holds controlling interests in Elink Telecommunications Inc., which provides service in the District of Columbia, and Elink Telecommunications of VA, Inc. which provides service in Virginia. Eureka Parent is a privately-held corporation which, through its operating subsidiaries, including Eureka, does business under the d/b/a, Eureka Networks. The following entities own 10% or more of Eureka Parent: AP Eureka, LLC, a U.S. citizen, 27%; Trimaran Investments II, LLC⁴, a U.S. citizen, 24%; Lazard Freres & Co., LLC, a U.S. citizen, 12%; and Gigaline, L.P., a U.S. citizen, 11%. No entity owns more than 37% of AP Eureka, LLC.⁵ No entity owns or controls more than 41% of Trimaran and no entity owns more than 50% of Lazard Freres & Co., LLC. Thru Line Inc., a U.S. citizen, owns 100% of Gigaline, L.P. Edward P. Bass, a U.S. citizen, owns 100% of Thru Line Inc.

Eureka provides a variety of regulated and unregulated services, including facilities-based Internet Services, high-speed Internet access, Internet protocol-based application services to business customers with bandwidth-intensive needs, and local and long distance voice products. The primary operations of Eureka are located in the New York City and Washington D.C. areas where Eureka works with property owners to install network infrastructure and offer high-quality services to building tenants. In addition to access services, the company provides voice and other services to enterprise customers in both on-net and off-net locations. Eureka has access to nearly 550 pre-wired buildings, including more than 350 buildings in the New York metro area. Eureka is wholly-owned by Eureka Parent.

InfoHighway is a Delaware corporation that provides integrated communications solutions, including end-to-end voice and data communications solutions primarily to business customers in major markets in the northeastern United States and selected areas of Texas. InfoHighway offers, through its wholly-owned subsidiary, A.R.C. Networks, high-quality local and long distance telephone services, point-to-point data services, high-speed Internet services, and network design and wiring. GTCR Fund VII, L.P., a U.S. citizen, owns 71.4% of InfoHighway.

A.R.C. Networks is a Delaware corporation that holds authority to provide interexchange service nationwide and competitive local exchange service in selected markets. A.R.C. Networks is authorized to provide competitive local exchange services in California, Connecticut, Delaware, Washington, D.C., Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Vermont and Virginia. A.R.C. Networks is authorized as an interexchange carrier in Arizona, Arkansas,

⁴ Trimaran Investments II, LLC holds its interests through five different entities, none of which individually hold more than 10% in Eureka Parent. Those entities are Trimaran Fund II, LLC, CIBC MB, Inc., CIBC Employee Private Equity Fund (Trimaran) Partners, Trimaran Parallel Fund II, L.P. and Trimaran Capital, LLC.

⁵ See Letter from Catherine Wang and Brian M. McDermott, Swidler Berlin LLP, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-214 (filed June 23, 2005).

California, Colorado, Connecticut, Delaware, Washington D.C., Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont and Virginia. A.R.C. Networks is wholly-owned by InfoHighway.

On May 9, 2005, Eureka Parent and InfoHighway entered into an Agreement and Plan of Merger (“Agreement”) under which a newly created, wholly-owned subsidiary of Eureka Parent, IH Acquisition Corporation (“IH Acquisition”), will be merged with and into InfoHighway. InfoHighway will survive that merger and will become a direct subsidiary of Eureka Parent. In connection with the proposed merger, each share of preferred stock of InfoHighway will be converted into the right to receive a portion of the merger proceeds. Following the proposed transaction, Eureka Parent will own all of the outstanding stock of InfoHighway, thereby making InfoHighway a direct, wholly-owned subsidiary of Eureka Parent.

In addition, Applicants propose, over time, to migrate A.R.C. Networks’ New York and New Jersey customers to Eureka in order to consolidate Applicants’ customer bases in New York and New Jersey. Applicants do not anticipate that the proposed migration of customers will occur at the same time as the transfer of control. However, because the process of migrating A.R.C. Networks’ customers in New York and New Jersey is expected to commence soon after the change in control, Applicants are also requesting approval to complete the proposed transfer of A.R.C. Networks’ customer base to Eureka.

The Applicants assert that the proposed transfer of control is in the public interest because it will promote competition among telecommunications providers. In particular, the proposed transactions will combine the strengths of Eureka and A.R.C. Networks which should allow the combined companies to compete more effectively against incumbent carriers and larger competitive carriers which have substantial resources and can offer a wide range of facilities-based service offerings. The Applicants state that A.R.C. Networks’ customers will continue to receive services under the same rates, terms and conditions that are currently provided to them. The Applicants believe that the proposed transaction will enhance the ability of the entities to expand their respective operations both in terms of service area coverage and the ability of each entity to offer customers an expanded line of products and services. In addition, the Applicants expect that the proposed transaction, by combining Eureka’s substantial facilities-based network and A.R.C. Network’s customer base, will yield substantial operational and financial benefits to the combined companies.

GENERAL INFORMATION

The transfer of control and acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules and policies. Interested parties may file **comments on or before July 8, 2005** and **reply comments on or**

before July 15, 2005.⁶ Unless otherwise notified by the Commission, Applicants are permitted to transfer the stock and related control on the 31st day after the date of this notice.⁷ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Kimberly Jackson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail: kimberly.jackson@fcc.gov
- (4) Renee R. Crittendon, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C311, Washington, D.C. 20554; e-mail: renee.crittendon@fcc.gov;
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Kimberly Jackson at (202) 418-7393.

- FCC -